

### **REMARKS**

Applicant respectfully requests reconsideration of the above-identified patent application in view of the amendments set forth above and the remarks below.

Claims 1-15 and 17-20 are pending in the application and are rejected. Claim 16 was previously canceled.

#### **Claim Objections**

Claim 15 is amended to include a colon after the word "including" as suggested by the Examiner.

#### **The Rejections Under 35 U.S.C. §112, First Paragraph**

The Examiner rejects Claim 1 under 35 U.S.C. §112 first paragraph first paragraph. While Applicant does not necessarily agree with the Examiner's assertion that claim 1 omits essential elements, Applicant amends claim 1 to clarify browsing and marking steps. Applicant makes this amendment not for reasons of patentability but rather to expedite allowance of the present application.

#### **The Rejections Under 35 U.S.C. §112, Second Paragraph**

The Examiner rejects Claims 1-11 under 35 U.S.C. §112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner asserts that the limitation "retrieving a list of object..." is indefinite on the basis that there is no indication as to who is retrieving the list. While Applicant does not agree that the retrieving must be identified in present method claim 1, Applicant amends claim 1 to clarify that a data backup and storage system retrieves the list of objects to expedite allowance of the present application and not for reasons of patentability. Applicant also amends claim 1 to clarify the lists of different objects as set forth above.

Claim 12 is amended to recite "identifying" to replace "determining" to more clearly define the claimed invention.

With respect to claim 15 and the term "restore triangle," Applicant is unclear as to the Examiner's basis for rejection. As the Examiner notes, this term is shown and described multiple times in Applicant's specification. In addition, in an exemplary embodiment Applicant shows well-known Unix functions (auxproc, recxpio, xcpio) that can be used to provide the "restore triangle," which is described in the specification.

#### The Prior Art Rejections

The Examiner rejects Claims 1-20 under 35 U.S.C. §103(a) over U.S. Patent No. 6,611,850 to Shen in view of U.S. Patent No. 6,427,149 to Rodriguez.

Shen merely discloses an apparatus for file backup and restoration. Applicant submits that Shen clearly falls within the prior art systems described in the Background of the Invention section of Applicant's specification that require serial browsing, marking and submitting of items for restoration. Further, as described in the passage in Shen cited by the Examiner (col. 19, lines 10-30 and 35-50), Shen is limited to restoration of a *file*. Shen does not contemplate multiple restoring *objects*, such as databases, files, etc., as described in Applicant's specification, let alone executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that multiple restore submissions can be made prior to restore execution.

In contrast, amended claim 1 requires a method of restoring backed up data, including retrieving, by a data backup and storage system, a list of objects that are restorable by a client, displaying the list of restorable objects for browsing by a user, generating a list of restorable *objects marked for restoration* by the user, wherein *each of the restorable objects is associated with a particular library*, submitting the list of marked restorable objects for restoration by the client, and executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that *multiple restore submissions can be made prior to restore execution*.

Applicant submits that Shen simply does not contemplate the claimed method of restoring backed up data, which requires, among other things, generating a list of restorable *objects marked for restoration* by the user, wherein *each of the restorable objects is associated with a particular library*, and executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that *multiple restore submissions can be made prior to restore execution*.

While Applicant submits that the invention as claimed is quite different from that of Shen and/or Rodriguez, Applicant amends claim 1 to clarify that “*each of the restorable objects is associated with a particular library*,” as described in the specification, at page 13, for example. Libraries are further described throughout the application. Libraries provide information contained in catalogs of back up data to a restore engine for allowing a user to browse and mark files for restoration. Submit objects include one or more submit files containing information extracted from the library catalogs associated with marked objects by the restore engine to enable restoration of the objects.

Applicant submits that Rodriguez fails to overcome any of the deficiencies of Shen set forth above.

Rodriguez merely teaches a technique to enable an Internet user to utilize a browser application to see and select files in a ZIP archive file by providing hyper text links in an HTML document. Rodriguez avoids the need for a user to download the entire ZIP archive file. Applicant presumes the Examiner is quite familiar with zipping files to compress data in an archive file and unzipping archive files. Applicant submits that the trivial archive file recovery technique taught by Rodriguez is quite irrelevant to backing up huge amounts of data contained in submit objects, which can include databases, and restoring the backed up data using a data backup system, such as the one shown and described in Applicant's specification.

Applicant submits that Rodriguez fails to teach or suggest any of the claimed method of restoring backed up data, which requires, among other things, generating a list of restorable *objects marked for restoration* by the user, wherein *each of the restorable objects is associated with a particular library*, and executing a restoration of the submitted list of marked restorable objects via a remote procedure call such that *multiple restore submissions can be made prior to restore execution*.

Accordingly, Applicant submits that claim 1 is patentably distinguishable over Shen and/or Rodriguez. For at least substantially the same reasons, Applicant submits that claims 2-15 and 17-20 are also distinguishable over the cited references.

Moreover, as the Examiner is well aware, to properly establish prima facie obviousness a motivation to combine the references as proposed must be identified. In the present case, the Examiner has impermissibly used Applicant's disclosure as a roadmap in attempt to identify and combine certain features of the claimed invention to establish, using hindsight, that the invention is obvious. The Examiner has identified no such motivation to combine the references as proposed. Applicant submits that, absent Applicant's specification, the Examiner can identify no such motivation since none exists. Shen is directed to a system for backing up and restoring data using a "backup copy generating process" and a "restore process," which are explained in great detail. Rodriguez is directed to simply accessing files in a zipped archive file over the Internet using a browser, which is hardly compatible with the system taught by Shen. Rodriguez is limited to zipped archive files and has no relationship to, and is useless for, the backup and restore system of Shen.

In view of the above, Applicant submits that claims 1-15 and 17-20 are patentably distinguishable over the cited references.

The Examiner is respectfully invited to telephone the undersigning attorney if there are any questions regarding this Amendment or this application.

Applicant does not acquiesce to any assertion made by the Examiner that is not specifically addressed herein.

The Assistant Commissioner is hereby authorized to charge payment of any additional fees associated with this communication or credit any overpayment to Deposit Account No. 500845.

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Respectfully submitted,

DALY, CROWLEY & MOFFORD, LLP

By: Paul D. Durkee

Paul D. Durkee

Reg. No. 41,003

Attorney for Applicant(s)

275 Turnpike Street, Suite 101

Canton, MA 02021-2354

Tel.: (781) 401-9988,

Fax: (781) 401-9966

*pdd@dc-m.com*